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8 **BEFORE THE**
9 **BOARD OF REGISTERED NURSING**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

11 In the Matter of the Accusation Against:

Case No. 2011-81

12 **JAN SHELL DUSEL**
13 **aka JAN SHELL**
14 **444 Rosalie Drive**
15 **Sonoma, CA 95476**
16 **Registered Nurse License No. 209108**
17 **Nurse Midwife Certificate No. 166**
18 **Public Health Nurse Certificate No. 15313**

ACCUSATION

19 Respondent.

20 Complainant alleges:

21 PARTIES

22 1. Louise R. Bailey, M.Ed., RN ("Complainant") brings this Accusation solely in her
23 official capacity as the Interim Executive Officer of the Board of Registered Nursing, Department
24 of Consumer Affairs.

25 2. On or about July 31, 1970, the Board of Registered Nursing issued Registered Nurse
26 License Number 209108 to Jan Shell Dusel, aka Jan Shell ("Respondent"). The Registered Nurse
27 License was in full force and effect at all times relevant to the charges brought herein and will
28 expire on March 31, 2012, unless renewed.

3. On or about January 1, 2001, the Board of Registered Nursing issued Nurse Midwife Certificate Number 166 to Respondent. The Nurse Midwife Certificate was in full force and effect at all times relevant to the charges brought herein and will expire on March 31, 2012, unless renewed.

4. On or about September 18, 1970, the Board of Registered Nursing issued Public Health Nurse Certificate Number 15313 to Respondent. The Public Health Nurse Certificate was in full force and effect at all times relevant to the charges brought herein and will expire on March 31, 2012, unless renewed.

JURISDICTION

5. This Accusation is brought before the Board of Registered Nursing (“Board”), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

6. Section 2750 of the Business and Professions Code ("Code") provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

7. Section 2764 of the Code provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license.

RELEVANT STATUTES AND REGULATIONS

8. Section 2761 of the Code states:

"The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:

"(a) Unprofessional conduct, which includes, but is not limited to, the following:

"(1) Incompetence, or gross negligence in carrying out usual certified or licensed nursing functions.

• • •

"(d) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violating of, or conspiring to violate any provision or term of this chapter [the Nursing Practice Act] or regulations adopted pursuant to it.

9. Code section 2746.5 provides in relevant part that:

“(a) The certificate to practice nurse-midwifery authorizes the holder, under the supervision of a licensed physician and surgeon, to attend cases of normal childbirth and to provide prenatal, intrapartum, and postpartum care, including . . . immediate care for the newborn.

(b) As used in this chapter, the practice of nurse-midwifery constituted the furthering or undertaking by any certified person, under the supervision of a licensed physician and surgeon who has current practice or training in obstetrics, to assist a woman in childbirth so long as progress meets criteria accepted as normal. All complications shall be referred to a physician immediately. . . .”

(c) As used in this article, “supervision” shall not be construed to require the physical presence of the supervising physician.”

10. California Code of Regulations, title 16, section 1442, states:

"As used in Section 2761 of the code, 'gross negligence' includes an extreme departure from the standard of care which, under similar circumstances, would have ordinarily been exercised by a competent registered nurse. Such an extreme departure means the repeated failure to provide nursing care as required or failure to provide care or to exercise ordinary precaution in a single situation which the nurse knew, or should have known, could have jeopardized the client's health or life."

11. California Code of Regulations, title 16, section 1443, states:

"As used in Section 2761 of the code, 'incompetence' means the lack of possession of or the failure to exercise that degree of learning, skill, care and experience ordinarily possessed and exercised by a competent registered nurse as described in Section 1443.5."

1 12. California Code of Regulations, title 16, section 1443.5 states:

2 "A registered nurse shall be considered to be competent when he/she consistently
3 demonstrates the ability to transfer scientific knowledge from social, biological and physical
4 sciences in applying the nursing process, as follows:

5 "(1) Formulates a nursing diagnosis through observation of the client's physical condition
6 and behavior, and through interpretation of information obtained from the client and others,
7 including the health team.

8 "(2) Formulates a care plan, in collaboration with the client, which ensures that direct and
9 indirect nursing care services provide for the client's safety, comfort, hygiene, and protection, and
10 for disease prevention and restorative measures.

11 "(3) Performs skills essential to the kind of nursing action to be taken, explains the health
12 treatment to the client and family and teaches the client and family how to care for the client's
13 health needs.

14 ...

15 "(5) Evaluates the effectiveness of the care plan through observation of the client's physical
16 condition and behavior, signs and symptoms of illness, and reactions to treatment and through
17 communication with the client and health team members, and modifies the plan as needed.

18 "(6) Acts as the client's advocate, as circumstances require, by initiating action to improve
19 health care or to change decisions or activities which are against the interests or wishes of the
20 client, and by giving the client the opportunity to make informed decisions about health care
21 before it is provided."

22 COST RECOVERY

23 13. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
24 administrative law judge to direct a licensee found to have committed a violation or violations of
25 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
26 enforcement of the case.

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15. Complainant is informed and believes that at all relevant times as set forth herein, Respondent did not have a supervising physician for her home birth practice as mandated by Code section 2746.5.

17. S.C.'s labor began at 1:20 a.m., on January 15, 2009, with the spontaneous rupture of membranes. Her husband placed a telephone call to Respondent at approximately 2:10 a.m.

19. S.C. had a precipitous birth at 4:40 a.m., delivering Baby A., a viable female. Respondent assigned Apgar scores of 5, 7, and 7 (at one, five and ten minutes respectively) to Baby A.¹

21. Respondent did not believe that Baby A.'s condition was serious and therefore she did not initiate the Emergency Medical Response System (911) for assistance and transport of Baby A. to the hospital. Instead, she advised S.C. and her husband to drive Baby A. to the hospital, with Respondent following in her vehicle.

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22. S.C. and her husband arrived at QVMC at 6:50 a.m., approximately two hours after Baby A.'s birth. She was attended to by NICU (Neonatal Intensive Care Nursery) nurses and found on admission to be nearly apneic (not breathing), blue, with minimal tone and non-responsive.

23. Baby A. was admitted to the hospital's NICU and placed on a ventilator. During the course of her hospitalization, she was diagnosed with having sustained severe neurological injury as a result of lack of oxygenation at or after her birth.

24. On February 2, 2009, Baby A. was taken off the ventilator. She died the next day, on February 3, 2009, approximately 19 days after her birth.

FIRST CAUSE FOR DISCIPLINE

(Gross Negligence/Incompetence - Failure To Have Additional Qualified Personnel at Home Birth)

25. Respondent is subject to disciplinary action for gross negligence and/or incompetence under Code section 2761(a), subdivision (1) in that at the time of S.C.'s delivery she failed to provide a safe home birth environment by having additional qualified assistants to provide care for Baby A., as set forth above in paragraphs 18 through 24.

SECOND CAUSE FOR DISCIPLINE

(Gross Negligence/Incompetence – Failure to Timely Recognize Neonatal Distress)

26. Respondent is subject to disciplinary action for gross negligence and/or incompetence under Code section 2761(a), subdivision (1) in that she failed to recognize the signs of neonatal distress as presented by Baby A. immediately after her birth, as set forth above in paragraphs 18 through 24.

THIRD CAUSE FOR DISCIPLINE

(Gross Negligence/Incompetence – Failure to Recognize Signs of Persistent Neonatal Distress and Initiate Resuscitation)

27. Respondent is subject to disciplinary action for gross negligence and/or incompetence under Code section 2761(a), subdivision (1) in that she failed to recognize the persistent signs of

1 neonatal distress as presented by Baby A., and failed to initiate appropriate resuscitation as set
2 forth above in paragraphs 18 through 24.

3 FOURTH CAUSE FOR DISCIPLINE

4 (Gross Negligence/Incompetence – Failure to Timely Transport)

5 28. Respondent is subject to disciplinary action for gross negligence and/or incompetence
6 under Code section 2761(a), subdivision (1) in that she failed to timely initiate Emergency
7 Medical Services to have Baby A. transported to the nearest hospital, given her persistent signs of
8 distress, as set forth above in paragraphs 18 through 24.

9 FIFTH CAUSE FOR DISCIPLINE

10 (Gross Negligence/Incompetence – Failure to Have Obstetrician Supervision)

11 29. Respondent is subject to disciplinary action for gross negligence and/or incompetence
12 under Code section 2761(a), subdivision (1) in that she failed to have a supervising physician for
13 her home birth practice as mandated by Code section 2746.5, subdivision (b), as set forth above in
14 paragraphs 14 and 15.

15 PRAYER

16 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
17 and that following the hearing, the Board of Registered Nursing issue a decision:

18 1. Revoking or suspending Registered Nurse License Number 209108, issued to Jan
19 Shell Dusel, aka Jan Shell.

20 2. Revoking or suspending Nurse Midwife Certificate Number 166, issued to Jan Shell
21 Dusel, aka Jan Shell.

22 3. Revoking or suspending Public Health Nurse Certificate Number 15313, issued to Jan
23 Shell Dusel, aka Jan Shell.

24 4. Ordering Jan Shell Dusel, aka Jan Shell, to pay the Board of Registered Nursing the
25 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
26 Professions Code section 125.3.

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5. Taking such other and further action as deemed necessary and proper.

DATED: 7/29/10

Louise R. Bailey
LOUISE R. BAILEY, M.ED., RN
Interim Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant

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